

**05-02-2005 – REVISED TO AMEND SITE Agenda Item #7 Taste of Wichita, per request of Applicant.**

**05-02-2005 - REVISED TO AMEND RECOMMENDED ACTION Agenda Item #. 22  
Ordinance to Authorize Section 108 Wichita Biz Loan Program Amendments**

**04-29-2005 - REVISED TO AMEND RECOMMENDED ACTION Agenda  
Item #21: Letter of Intent for Old Town Courtyard by Marriott Hotel Project**

## **May 3, 2005 - AGENDA REPORTS**

### **Agenda Item No. 5**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0395

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Sanitary Sewer in Fontana Addition (east of 119th St. West, north of 29th St. North) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the new Petition.

Background: On September 14, 2004, the City Council approved a Petition to construct a sanitary sewer in Fontana Addition. The developer has submitted a new Petition to reallocate special assessments within the Addition. The signature on the new Petition represents 100% of the improvement district.

Analysis: The project will serve a new residential development located east of 119th St. West, north of 29th St. North.

Financial Considerations: The project budget is unchanged.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or the majority of the property in the improvement district.

Recommendation/Action: It is recommended that the City Council approve the new Petition and adopt the Resolution.

### **Agenda Item No. 7**

#### **Revised to Amend Site of "Taste of Wichita," per Request of Applicant**

**City of Wichita  
City Council Meeting  
May 3, 2005**

**Agenda Report No. 05-0396**

**TO:** Mayor and City Council

**SUBJECT:** Special Events Street Closures

**INITIATED BY:** City Manager's Office

**AGENDA:** Consent

**Recommendation:** Approve the request for street closures.

**Background:** In accordance with the Special Events Procedure, event sponsors are to notify adjacent property owners and coordinate arrangements with Staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted (see attached maps):

**Big Dog Motorcycles – Tornado Rally – June 10, 11 & 12**

One-block area including Big Dog Motorcycles at 1520 E. Douglas  
6:30 p.m., Friday to Midnight, Sunday, June 10-12

- Douglas from New York to west edge of Hydraulic (Hydraulic open)
- New York from Douglas to First Street (First Street open)
- Pennsylvania from Douglas to First Street

**Taste of Wichita – July 1 & 2**

**Site has been changed by request of applicant**

~~Area surrounding Century II, across Douglas Street Bridge, & north on McLean  
— 6:30 p.m., Friday to Midnight, Saturday, July 1 & 2~~

- ~~▪ Tlalnepantla Drive east to Main Street~~
- ~~▪ Main Street north to Douglas~~
- ~~▪ Douglas west to McLean (closing access to Waco, Civic Center Plaza, & Water)~~

- ~~McLean north to First Street~~

**Area including Douglas Street Bridge, West Bank, & city parking at SW corner of First & Waco**

**6:30 p.m., Friday to Midnight, Saturday, July 1 & 2**

- **Douglas Street Bridge east to McLean**
- **McLean north to First Street (First Street will remain open)**

Police security is arranged to remove street barricades as necessary to allow emergency vehicle access during entire designated time period

**Financial Consideration:** Inasmuch as possible, event sponsors are responsible for all costs associated with special events.

**Recommendation/Actions:** It is recommended that the City Council approve the request subject to: (1) Event sponsors notifying every property and/or business adjoining any portion of the closed street; (2) Coordination of event arrangements with City Staff; (3) Hiring off-duty public safety officers as required by the Police Department; (4) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; (5) Submitting a Certificate of Insurance evidencing general liability insurance which covers the event and its related activities, including the naming of the City as an additional insured with respect to the event's use of the closed City streets.

## **Agenda Item No. 9a**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0397

TO: Mayor and City Council

SUBJECT: Easement Encroachment Agreement/Twenty First Growth, LLC  
(District II)

INITIATED BY: Water & Sewer Department

AGENDA: Consent

Recommendation: Approve the Easement Encroachment Agreement.

Analysis: The Agreement allows Twenty First Growth, LLC to occupy and construct, improvements on, over, and across a platted 20 foot utility easement being centered on the following described line: COMMENCING at the South most corner of said Reserve "A", thence along the Southerly line of said Reserve "A" on a curve to the left 40.42 feet

to reverse curve to the right, said curve to the left having a radius of 390.00 feet, a central angle of 05°56'19", a long chord of 40.41 feet, bearing N19°38'37"W; thence along said reverse curve to the right 84.82 feet to the POINT OF BEGINNING, said curve to the right having a radius of 232.00 feet, a central angle of 20°56'49", a long chord of 84.35 feet, bearing N27°08'52"E; thence along the centerline of said platted 20 foot utility easement N01°25'27"W, 161.18 feet to the POINT OF TERMINOUS said point being the Southwest corner of Lot 7, Block 1, said Hawthorne Second Addition. The east sideline to terminate on the South line of said Lot 7, hereinafter referred to as Tract "A" and waives all rights of action in law arising out of the encroachment into the easement. The improvement is a masonry wall and footing; swimming pool decking; curb and gutter; concrete walk; concrete and/or asphalt parking lot, all in above-said easement. The Agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of said sewer line lying within Tract "A" and from claims resulting from replacement or upgrade of lines, manholes, and/or other Department property in the easement.

Financial Considerations: There are no financial considerations.

Legal Considerations: The Law Department has reviewed the Easement Encroachment Agreement and approved it as to form.

Recommendations/Actions: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

### **Agenda Item No. 9b**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0398

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement for Construction Engineering and Staking in Fox Ridge Addition (north of 29th Street North, between Maize and Tyler) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: The City Council approved the water distribution system and paving improvements in Fox Ridge Addition on June 10, 2003. On January 25, 2005 the City

approved an Agreement with MKEC Engineering Consultants, Inc. (MKEC) to design the improvements. The Design Agreement with MKEC requires MKEC to provide construction engineering and staking services if requested by the City.

Analysis: The proposed Supplemental Agreement between the City and MKEC provides for construction engineering and staking for the improvements. Due to the current workload created by previous projects, City crews are not available to perform the staking for this project.

Financial Considerations: Payment to MKEC will be on a lump sum basis of \$28,000, and will be paid by special assessments.

Legal Considerations: The Supplemental Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Supplemental Agreement and authorize the necessary signatures.

#### SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED JANUARY 25, 2005

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

MKEC ENGINEERING CONSULTANTS, INC.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated January 25, 2005) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements in FOX RIDGE ADDITION (north of 29th Street North, between Maize and Tyler).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

**A. PROJECT DESCRIPTION**

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

**STAKING, AS-BUILT AND CONSTRUCTION ENGINEERING**

(as per the City of Wichita Standard Construction Engineering Practices)

**WATER DISTRIBUTION SYSTEM NO. 448 89838** serving Lots 49 through 69, Block 4, Fox Ridge Addition (north of 29th Street North, between Maize and Tyler) (Project No. 448 89838).

**DEN HOLLOW** from the south line of Lot 48, Block 4 to the west line of Lot 60, Block 4; **DEN HOLLOW COURT** from the west line of Den Hollow to and including the cul-de-sac serving Lots 50 through 53, Block 4; **DEN HOLLOW COURT** from the south line of Den Hollow to and including the cul-de-sac serving Lots 55 through 59, Block 4; and **DEN HOLLOW CIRCLE** from the west line of Lot 60, Block 4 to and including the cul-de-sac serving Lots 60 through 67, Block 4, (north of 29th Street North, between Maize and Tyler) (Project No. 472 83790).

As-built of all areas included in the project mass grading plan will be the responsibility of the ENGINEER and shall be submitted and sealed by a licensed land surveyor or registered professional engineer. Final elevations for all areas to be graded per plans, provisions or otherwise, including street right-of-way, lots, easements, ponds and reserve areas, shall be within +/- 0.2' of plan call-outs, unless otherwise stated in plans or provisions. ENGINEER will be responsible to coordinate any rework with the contractor, regardless of the number of times necessary to achieve allowable tolerance, and will ensure that a minimum slope is maintained in all drainage easements, especially in such cases where the +/- tolerance could result in a less than desirable percent of grade. Two copies of the project specific mass grading and pond construction plan sheets will be submitted to the project engineer as soon as possible after completion of final grading, will show original plan and final as-built elevations at all original call-out locations.

**B. PAYMENT PROVISIONS**

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

448 89838	\$21,940.00
472 83790	\$23,090.00
TOTAL	\$45,030.00

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

BY ACTION OF THE CITY COUNCIL

\_\_\_\_\_  
Carlos Mayans, Mayor

ATTEST:

\_\_\_\_\_  
Karen Schofield, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Gary Rebenstorf, Director of Law  
MKEC ENGINEERING CONSULTANTS, INC.

\_\_\_\_\_  
(Name & Title)

ATTEST:

\_\_\_\_\_  
**Agenda Item No. 9c**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0399

TO: Mayor and City Council Members

SUBJECT: Release Agreement with Murillo Studios: Improvements to Central Riverside Park (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Release Agreement

Background: An element of the architect's design for the Riverside Park project was to be a series of twelve historical markers spaced around the edge of the ½ mile long oval-shaped strolling path in Central Riverside Park. Steve Murillo of Murillo Studios was the artist consultant who developed the concept based on brass frames set into twelve limestone monuments. The frames were to be leaf-shaped in recognition of trees native to this area, and a panel with photographic reproductions of historic Wichita with added text was to be located in each brass frame. Murillo, the architects and City representatives worked together to identify and approve the content of the historical markers.

The general contractor for the project, Robl Construction, Inc., hired Murillo Studios as a subcontractor to construct the historical markers. It has become apparent that the historical markers as constructed have a problem because the artwork and its covering has suffered significant damage from a combination of weather and vandalism. A different material has been found for the photographic panels, to replace Murillo's original panels in the brass frames, that will be much more resistant to damage. However, because of the cooperative effort of the architects, Murillo and the City to design the historical markers and select the materials used, it will be necessary for the City to work with the other parties in affecting a solution.

Analysis: The recommended solution to repair the historical markers and to increase their durability is to use special laminate panels in lieu of the original panel materials, but to do this, the City needs a license to reuse the artwork owned by Murillo Studios. A proposed settlement has been negotiated, the first step of which is for the City to release Steve Murillo and Murillo Studios from all liability related to current and future problems arising from the historical markers in Central Riverside Park in return for the City's right to reuse the art. This Release Agreement accomplishes that goal.

Steve Murillo is waiving all claims for the remaining \$3200 which Robl Construction has not paid to Murillo Studios for the original installation of the historical markers in return for the City signing the Release Agreement. This \$3200 will remain with Robl Construction to help pay for the reworking of the historical markers with the new laminate panels.

Financial Considerations: There is no charge associated with this Release Agreement.



Legal Considerations: The Law Department has approved the Release Agreement as to legal form.

Recommendation/Action: It is recommended that the City Council approve the Release Agreement and authorize the necessary signatures.

## RELEASE AGREEMENT

This Release Agreement is entered into between Murillo Studios, Steve Murillo, Robl Commercial Construction, Inc. (Robl) and the City of Wichita on the \_\_\_\_ day of December, 2004.

Whereas,

1. Murillo Studios entered into a subcontract dated March 7, 2003, Contract No. 0650-010 (the Subcontract) with Robl for certain work (the Work) with respects to the Central Riverside Park (the Park) in Wichita Kansas, which Work included historical markers along the footpath in the Park (the Markers);
2. Steve Murillo has created certain artwork for Murillo Studios for the Markers (the Artwork):
3. Murillo Studio has been paid all but \$3,200.00 of the contract price for the Work;
4. Robl and the City of Wichita have asserted that the Work is not complete because of the failure of the medium in which the Artwork was displayed;
5. Murillo own the copyright to the Artwork;
6. Robl seeks to use the Artwork to complete the Markers to the satisfaction of the City of Wichita;
7. The City of Wichita seeks a license for the Artwork sufficient to allow it to renew the Markers as may be necessary over the life of the Park;

Therefore, the parties agree as follows:

- A. Robl and the City of Wichita hereby release Murillo Studios and Steve Murillo from all claims, duties, obligations, and warranties, of any kind whatsoever, whether arising existing now or arising in the future, relating in any way to the Work, the Artwork, or the Subcontract.
- B. Steve Murillo and Murillo Studios hereby release Robl from any obligation for further payment for the Work under the Subcontract.

C. Steve Murillo and Murillo Studios hereby grant to the City of Wichita a perpetual license to the City of Wichita, free of any claim for royalty or other further compensation, to create works from the Artwork for display in Central Riverside Park on the Markers.

D. Murillo Studios shall deliver to Robl a copy of a CD containing the Artwork upon full execution of the Release Agreement.

E. This Release Agreement may be executed in counterparts and facsimile signatures shall operate as originals. This Release Agreement shall be effective upon signature by all parties hereto.

Approved:

\_\_\_\_\_

Edward A. Martin  
behalf of  
Building Services Mgr.

Date

Steve Murillo, Individually and on  
Murillo Studios

ROBL COMMERCIAL

CONSTRUCTION INC.

Approved:

\_\_\_\_\_

By \_\_\_\_\_  
Chris Carrier, P.E. Date  
Name \_\_\_\_\_  
Director of Public Works  
Title \_\_\_\_\_

CITY OF WICHITA

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_

Gary Rebenstorf  
Director of Law

Date

Attest:

\_\_\_\_\_  
Karen Sublett  
City Clerk

\_\_\_\_\_  
Date

**Agenda Item No. 10**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0400

TO: Mayor and City Council Members

SUBJECT: Agreement for Design Services for a Water Distribution System  
for a new Goddard School Building (north of Kellogg, east of  
167th Street East)  
(District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Agreement.

Background: The City Council approved the water distribution system to serve a new Goddard school building on March 22, 2005.

Analysis: The proposed Agreement between the City and Wilson & Company, Inc. provides for the design of bond financed improvements consisting of water distribution system to serve a new Goddard school building. Per Administrative Regulation 7a, staff recommends that Wilson be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Wilson will be on a lump sum basis of \$34,655, and will be paid by special assessments and Water Utility. The utility share is for the cost of oversizing the pipeline to serve future development outside the improvement district.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

WILSON & COMPANY, INC

for

WATER DISTRIBUTION SYSTEM NO. 448 90060

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and WILSON & COMPANY, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NUMBER 448 90060 serving (new Goddard School) unplatted tract in Section 26, T27S, R2W (see Exhibit C) (north of Kellogg, east of 167th Street East) (Project No. 448 90060).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing a water distribution system to serve a new Goddard School and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory  
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall

contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

### III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

### IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 90060	\$34,655.00
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B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work, or because the services of the ENGINEER are unsatisfactory; PROVIDED, however, that in any case the ENGINEER shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this agreement, but in no case shall payment be more than the ENGINEER'S actual costs plus a fee for profit based upon a fixed percentage of the ENGINEER'S actual costs.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

---

Carlos Mayans, Mayor

SEAL:

ATTEST:

---

Karen Sublett, City Clerk

APPROVED AS TO FORM:

---

Gary Rebenstorf, Director of Law

WILSON & COMPANY, INC

---

(Name & Title)

ATTEST:

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EXHIBIT "A"

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared in ink on standard 22" x 36" mylar sheets.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I - PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.



2. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
3. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
4. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT's plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 78, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be provided to the CITY via floppy diskettes (3 1/2"), CD-ROM, or other media acceptable to the City Engineer. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
5. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the monumentation of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
6. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.
7. Deliver the original tracings of the Final approved plans to the CITY for their use in printing plans for prospective bidders.
8. All applicable coordinate control points and related project staking information shall be furnished on a 3-1/2" diskette in a format agreed upon by the CITY. When applicable, this coordinate information will be used by the CITY for construction staking purposes.

9. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.

a. Plan Development for the water improvements by May 31, 2005.  
(Project No. 448 90060).

Exhibit "C"

## UNPLATTED TRACT

In Section 26, T27S, R2W

### Parcel 1:

The NW1/4, of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas, EXCEPT that part described as beginning at the N.W. corner of said NW1/4; thence S00°27'23"W, along the west line of said NW1/4, 1320 feet; thence S89°56'13"E, parallel with the north line of said NW1/4, 1259.09 feet; thence S00°23'44"W, parallel with the east line of said NW1/4, 289.00 feet; thence S89°56'13"E, 1370.63 feet to the east line of said NW1/4; thence N00°23'44"E, along the east line of said NW1/4, 1609 feet to the N.E. corner of said NW1/4; thence N89°56'13"W, along the north line of said NW1/4, 2628.32 feet to the place of beginning.

### Parcel 2:

The SW1/4, of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas; EXCEPT that part condemned for US 54 Highway right-of-way in Condemnation Case No. B-17272; AND EXCEPT all of that part of the SW1/4 of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas platted as Neville West Addition, Wichita, Sedgwick County, Kansas; AND EXCEPT that part of the SW1/4 of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas, described as beginning at the N.W. corner of said SW1/4; thence N89°54'51"E, 253.71 feet; thence S00°32'21"W, parallel with the west line of said SW1/4, 253.71 feet; thence S89°54'51"W, parallel with the north line of said SW1/4, 253.71 feet to the west line of said SW1/4; thence N00°32'21"E, along the west line of said SW1/4, 253.71 feet to the place of beginning; AND EXCEPT that part of the SW1/4 of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas, described as beginning at a point on the west line of said SW1/4, said point being N00°32'21"E, 1390.55 feet of the S.W. corner of said SW1/4 (said point being the N.W. corner of Neville West Addition, Wichita, Sedgwick County, Kansas); thence N00°32'21"E, along the west line of said SW1/4, 273.39 feet; thence S89°27'39"E, 898.12 feet; thence S46°22'09"E, 439.02 feet to the northerly most corner of Lot 1, Block 2, in said Neville West Addition; thence S43°37'51"W, along the northwesterly line of Lot 1, in said Block 2, 250 feet to the westerly most corner of Lot 1, in said Block 2; thence northwesterly and westerly, along the northerly line of Woodbine Circle as platted in said Neville West Addition with the following chords and bearings: N46°22'09"W, 297.73 feet to the P.C. of a curve to the left, having a radius of 182 feet; thence northwesterly, along said curve and through a central angle of 43°05'30", 136.88 feet to the P.T. of said curve; thence N89°27'39"W, 201.17 feet to the P.C. of a curve to the left, having a radius of 182 feet; thence southwesterly, along said curve and through a central angle of 29°37'15", 94.09

feet to the P.R.C. of a curve to the right, having a radius of 150 feet; thence westerly, along said curve and through central angle of 29°37'15", 77.55 feet to the P.T. of said curve; thence N89°27'39"W, 340.91 feet to the place of beginning; AND EXCEPT that part of the SW1/4 of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas, described as beginning at the S.W. corner of Lot 4, Block 2, Neville West Addition, Wichita, Sedgwick County, Kansas; thence S89°22'10"E, along the south line of Lot 4, in said Block 2, 11.55 feet; thence S00°29'16"W, 63.77 feet to a point on the east line of Woodbine Circle as platted in said Neville West Addition, said point being the P.C. of a curve, having a radius of 182 feet; thence northerly, along the east line of said Woodbine Circle and said curve to the left, through a central angle of 20°31'09", 65.18 feet to the place of beginning; TOGETHER WITH that part of Lot 3, Block 2, Neville West Addition, Wichita, Sedgwick County, Kansas, described as beginning at the east corner common to Lots 3 and 4, in said Block 2; thence S43°37'51"W, along the line common to said Lots 3 and 4, 100.85 feet; thence N00°29'16"E, 138.22 feet to the northeasterly line of said Lot 3; thence S46°22'09"E, along the northeasterly line of said Lot 3, 94.52 feet to the place of beginning; AND TOGETHER WITH that part of Lot 4, Block 2, Neville West Addition, Wichita, Sedgwick County, Kansas, described as beginning at the East corner common to Lots 3 and 4, in said Block 2; thence S43°37'51"W, along the line common to said Lots 3 and 4, 100.85 feet; thence S00°29'16"W, 219.51 feet to a point on the south line of said Lot 4, said point being 11.55 feet east of the S.W. corner of said Lot 4; thence S89°22'10"E, along the South line of said Lot 4, 200 feet to the S.E. corner of said Lot 4; thence N00°29'16"E, along the East line of said Lot 4, 170.79 feet to a point of intersection; thence N46°22'09"W, along the northeasterly line of said Lot 4, 179.58 feet to the place of beginning; AND TOGETHER WITH all of Lot 1, Block 3, Neville West Addition, Wichita, Sedgwick County, Kansas.

Parcel 3:

Beginning at a point 990 feet south of the N.W. corner of Sec. 27, T27S, R2W of the 6th P.M., Sedgwick County, Kansas; thence East parallel with the north line of said Sec. 27, 1320 feet; thence South 330 feet; thence West 1320 feet to the west line of said Sec. 27; thence North 330 feet to the point of beginning.

**Agenda Item No. 11**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0401

TO: Mayor and City Council Members

SUBJECT: Change Order: Waterwalk Public Improvements (north of Kellogg, west of Main) (District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Change Order.

Background: On March 8, 2005 the City Council approved a construction contract for street and utility improvements associated with the Waterwalk. Due to the restrictive work area, a sanitary sewer wet well lift station needs to be built at this time rather than with a future project. The wet well will require excavation to a depth of 21 feet. Approximately 7 feet of the bottom of the well will be in ground water requiring dewatering. The soil is structured such that the top 8 feet is clay and the bottom 13 feet is sand. The high potential for collapse in the area surrounding the excavation will threaten nearby utilities and also put the new Dewey Street at risk due to loss of lateral support. To construct the wet well later will require an expensive caisson for lateral support to protect the utilities and the street.

Analysis: A Change Order has been prepared for the additional work that will allow the wet well to be installed now as a part of the street contract. Funding is available within the project budget.

Financial Considerations: The total cost of the additional work is \$37,895 with the total paid by the Sanitary Sewer Utility. The original amount for the street work is \$638,835. This Change Order represents 5.93% of the original contract amount.

Legal Considerations: The Law Department has approved the Change Order as to legal form. The Change Order amount is within 25% of the construction contract cost limit set by the City Council policy.

Recommendation/Action: It is recommended that the City Council approve the Change Order and authorize the necessary signatures.

October 26, 2004  
PUBLIC WORKS-ENGINEERING CHANGE ORDER

To: Dondlinger & Sons      Project: Water Main Replacement – Harry, Oliver to Woodlawn  
Change Order No.: 3   Project No.: 448-89700  
Purchase Order No.: 301361   OCA No.: 636116  
CHARGE TO OCA No.: 636116   PPN: 772513

Please perform the following extra work at a cost not to exceed   \$11,950.00

There were originally 60 services estimated to be in need of repair, and 29 more are needed.

OVERRUN:

Long Water Service (1") – 4 ea @ \$550.00/ea = \$ 2,200.00  
Short Water Service (1") – 25 ea @ \$450.00/ea = \$11,250.00

UNDERRUN:

Long Water Service (2") – 1 ea @ \$1,500.00/ea = (\$ 1,500.00)  
Total \$11,950.00

Recommended By:    Approved:

\_\_\_\_\_  
Lawrence Schaller, P.E.      Date    Jim Armour, P.E.      Date  
Construction Engineer      Acting City Engineer

Approved:    Approved:

\_\_\_\_\_  
Contractor      Date    Chris Carrier, P.E.      Date  
Acting Director of Public Works

Approved as to Form: By Order of the City Council:

\_\_\_\_\_  
Gary Rebenstorf      Date    Carlos Mayans      Date  
Director of Law      Mayor

Attest: \_\_\_\_\_  
City Clerk

**Agenda Item No. 12a**

CITY OF WICHITA  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0402

TO:                      Mayor and City Council Members

SUBJECT:              Acquisition of 609 South Pinecrest for the Dry Creek Basin  
Property Acquisition Project (District III)

INITIATED BY:      Office of Property Management

AGENDA: Consent

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Recommendation: Approve the acquisition

Background: There have been several, flooding incidents along the Dry Creek basin in East Wichita. As a result of this, the City Council approved a voluntary property acquisition program. The program calls for the acquisition of up to 16 residential properties that have habitable floors that are below the one hundred year flood elevation. One such property is 609 South Pinecrest, which is owned by Mr. & Mrs. David Sanders. The site contains 6,750 square feet and is improved with a 1,032 square foot ranch, wood frame residence.

Analysis: The city had the property appraised in February 2005. The appraised value of \$51,000 was offered to the owner. The owner has agreed to sell the property for this amount. The improvements will be removed and the site maintained as open space.

Financial Considerations: A budget of \$54,750 is requested. This includes \$51,000 for the acquisition, \$3,000 for demolition and \$750 for closing costs and title insurance. The funding source is the Storm Water Utility.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Real Estate Purchase Contract and 2) Authorize all necessary signatures.

**Agenda Item No. 12b**

CITY OF WICHITA  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0403

TO: Mayor and City Council Members

SUBJECT: Acquisition of Part of 4902 E. Central for Central: Oliver to Woodlawn (District I and II)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the acquisition.

Background: On November 4, 2003 City Council approved a project to improve Central, between Oliver and Woodlawn. The improvement plans call for partial acquisitions of seven parcels. One acquisition at 4902 E. Central requires a 325 square foot strip take of land. The property is a multi-tenant occupied building situated on a 6,969.6 square foot site.

Analysis: The property owner has agreed to accept \$13,525. \$1,300 for the acquisition, \$325 for the temporary easement. \$8,000 for his two commercial tenant's advertising signs and \$3,900 as damages including but not limited to the subject property's store entrance. One of the two signs, the large one of the two, is a customized wooden sign and the sign experts have advised Property Management that it is not possible to move the sign from its current location without permanently damaging the main structure of the sign. The current entrance to the building is impacted by the only possible relocation of the sign on the site.

Financial Considerations: The funding source for the City share of the project is General Obligation Bonds with Federal monies. A budget of \$15,000 is requested. This includes \$13,525 for the acquisition, and \$1,475 for closing costs and title insurance.

Legal Considerations: The Law Department has approved the contracts as to form.

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Contracts; and 3) Authorize all necessary signatures.

### **Agenda Item No. 12c**

CITY OF WICHITA  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0404

TO: Mayor and City Council Members

SUBJECT: Acquisition of Easements at 2000 North Greenwich Road for the  
Northeast Sewer Project (District II)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the acquisition of the easements.

Background: The City Council has approved the construction of force mains, pump stations, and gravity-flow sewer lines to serve the area along Greenwich Road from ½ mile south of 21st Street North to K-96 highway.

Analysis: The project requires one permanent and two temporary easements on this parcel. The permanent sewer easement is 30 feet wide and contains approximately 1.547 acres. The two temporary construction easements contain 2.024 and 1.050 acres. The owner has agreed to grant these easements for \$15,000. This amount also includes money for the replacement of a fence impacted by the easements.

Financial Considerations: A budget of \$15,500 is requested. This includes \$15,000 for the acquisition, and \$500 for closing costs and title insurance.

Legal Considerations: The Law Department has approved the easements as to form.

Recommendation/Action: It is recommended that the City Council approve the budget and easements; and authorize necessary signatures.

### **Agenda Item No. 13**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0405

TO: Mayor and City Council

SUBJECT: Purchase Option (Multimedia Security Service, Inc.) (District I)

INITIATED BY: City Manager's Office

AGENDA: Consent

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Recommendation: Adopt the Resolution and approve the Termination and Release of Lease and Site Lease Agreement.

Background: On December 13, 1994, the City Council approved the issuance of \$4.5 million in Industrial Revenue Bonds, Series XIX, 1994, to finance facilities for the benefit of Multimedia Security Service, Inc. Bond proceeds were used to finance the



construction and equipping of an international headquarters building located at 700 E. Waterman, in the core area of Wichita.

Analysis: Under the provisions of Sections 17.1 and 17.2 of the Lease Agreement for Series XIX, 1994 Bonds, Multimedia Security Service, Inc., the Tenant, has the option if all outstanding bonds and Trustee Fees have been paid to purchase the City's interest for the sum of \$1000. The City of Wichita, on March 29, 2005, received notice from the Trustee that all bonds were paid, and that Multimedia Security Service, Inc. desires to take reconveyance. The City will deliver the instruments needed to terminate its interest in the bond-financed property.

Financial Considerations: The purchase price is \$1,000 and other considerations as listed under the provision of the Lease Agreement to redeem and retire all outstanding bonds. This price includes without limitations, principal, interest, redemption premium, and all other expenses of redemption, and trustee fees, but after the deduction of any amounts described and provided for in the Lease Agreement and available for such redemption.

Legal Considerations: The City is contractually bound to convey its interest in the IRB Project property to the Tenant by an appropriate instrument, once all the conditions established in the Lease have been met. The City Attorney's Office has approved the form of the attached Resolution to authorize the execution of the Termination and Release of Lease and Site Lease Agreement (in substantially the form attached to the Resolution), and the delivery of such document following satisfaction of applicable conditions.

Recommendations/Actions: It is recommended that City Council adopt the Resolution approving the Termination and Release of Lease and Site Lease Agreement and authorize the necessary signatures, with delivery contingent upon satisfaction of all conditions for reconveyance under the Lease Agreement.

#### **Agenda Item No. 14**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0406

TO: Mayor and City Council Members

SUBJECT: Sidewalk Repair Assessment Program (All District)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the assessments and ordinance.

Background: State Law and City Policy provide that sidewalk maintenance is the responsibility of abutting property owners. When sidewalk trip hazards are identified, property owners are required to make repairs, either with their contractor or with the City's contractor. Property owners who use the City's contractor have the opportunity to spread the cost over five years as a special assessment.

Analysis: An Ordinance has been prepared to establish authority to use special assessment funding for the current list of repaired sidewalks.

Financial Considerations: Statements of Charges will be mailed to the property owners on May 13, 2005. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the February 2005 bond sold. The principal and interest will then be spread over 5-years and placed on the 2005 tax roll.

Legal Considerations: These assessments are in accordance with City Code 12.18.

Recommendation/Action: It is recommended that the City Council approve the proposed assessments and place the ordinance on first reading.

### **Agenda Item No. 15**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0407

TO: Mayor and City Council Members

SUBJECT: Amending Ordinances and Resolution: Central between I-235 Freeway and West Street; Broadway between Kellogg and Douglas, the K-96 Bike Path, from Oliver to the East City Limits and the 9th Street Bridge at the Westlink Tributary to Cowskin Creek (Districts I, II, IV, V and VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Amending Ordinances and Resolution.

Background: The City of Wichita and the State of Kansas have an ongoing program to match City funds with Federal Transportation Grants to improve arterial streets, bridges,

and bike paths. Upon completion of a project the Kansas Department of Transportation audits the actual project costs and makes a final determination on the match that it will provide. In some cases, if the anticipated match is reduced, additional local funds would be needed. That is the case on 3 projects as follows: Central between I-235 Freeway and West Street; Broadway between Kellogg and Douglas, the K-96 Bike Path, from Oliver to the east city limits and the 9th Street Bridge at the Westlink Tributary to Cowskin Creek.

Analysis: Amending Ordinances and Resolution have been prepared to authorize the budget increases.

Financial Considerations: The proposed local funding increases are: Central Avenue-\$30,000; Broadway-\$25,000; K-96 bike path-\$5,000; and the 9th Street Bridge-\$10,000. Funding is available from lower than expected expenditures for improvements to the 13th-Hydraulic Intersection and Central, between Maize and Tyler. The funding source is General Obligation Bonds.

Legal Considerations: The Department of Law has approved the Amending Ordinances and Resolution as to legal form.

Recommendation/Action: It is recommended that the City Council adopt the Amending Resolution and place the Amending Ordinances on first reading.

## **Agenda Item No. 16**

CITY OF WICHITA  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0408

TO: Mayor and City Council Members

SUBJECT: Granting of an Easement Across City Property at the 2300 Block of East MacArthur (District III)

INITIATED BY: Office of Property Management

AGENDA: Consent

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Recommendation: Approve the granting of the easement.

Background: On October 19, 2004, the City Council approved a project to eliminate primary treatment at Treatment Plant Number 1. Part of this project involves pressurizing 66-inch sewer line between Treatment Plant Number 1 and Treatment Plant

Number 2, thus facilitating the transfer of wastewater to Plant 2 for primary treatment. The pressurization will require increasing the size of the junction boxes along the line. This increase in size will cause a conflict with a jet fuel pipeline that is located in an easement across City-owned property along the south side of MacArthur.

Analysis: The owner of the jet fuel pipeline has agreed to relocate the line out of the existing easement at the point of conflict. To accomplish this, a new easement must be created. The affected parcel is just east of the entrance to Emery Park. It is titled to the Board of Park Commissioners. Emery Park property is located to the south down an access road. The easement request was approved by the Park Board on April 11, 2005.

Financial Considerations: Costs associated with the physical relocation of the jet fuel pipeline will be paid out of the project.

Legal Considerations: The Law Department has approved the easement as to form.

Recommendation/Action: It is recommended that the City Council approve the easements; and authorize necessary signatures.

### **Agenda Item No. 18**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0409

TO: Mayor and City Council

SUBJECT: First Supplemental and Amending Trust Indenture (BeautyFirst Project) (District II)

INITIATED BY: City Manager's Office

AGENDA: New Business

RECOMMENDATION: Close the Public Hearing and place the Ordinances on first reading.

BACKGROUND: On August 10, 2004, City Council approved the issuance of Industrial Revenue Bonds in an amount not-to-exceed \$3 million, to River Sharpe Properties LLC for the benefit of the BeautyFirst project. The City Council also approved a 100% five-plus-five year tax exemption on bond-financed improvements. The bonds were used to construct a 12,000 s.f. corporate office building and a 41,000 s.f. warehouse distribution facility. River Sharpe Properties LLC is requesting amendments to the Ordinance and

other bond documents to redeem a portion of the Series B, 2004 Bonds with Series A, 2004 Bond proceeds.

ANALYSIS: At the time the Bonds were issued, the project was completed under budget and as a result, the loan-to-equity ratio (i.e., the Series A-to-Series B ratio) is lower than what was originally agreed to by River Sharpe and Sunflower Bank, N.A., the Series A Bondholder. To reach the agreed upon ratio, River Sharpe would like to redeem a portion of the Series B, Bonds through the use of unspent proceeds of the Series A, Bonds. Sunflower Bank, N.A. was the original Purchaser of and continues to own 100% of the Series A, 2004 Bonds, and River Sharpe Properties LLC was the original Purchaser of and continues to own 100% of the Series B, 2004 Bonds.

Section 1102 of the 2004 Indenture provides that the Owners have the right to consent to execution by the Issuer and the Trustee of an amendment to modify any of the terms or provisions of the Indenture.

FINANCIAL CONSIDERATIONS: There is no financial impact to the City as a result of the amendment. Bond Counsel fees will be paid by River Sharpe Properties, LLC.

LEGAL CONSIDERATIONS: The City Attorney's Office has reviewed and approved the Ordinance and amended documents as to form.

RECOMMENDATIONS/ACTIONS: It is recommended that the City Council place on first reading the Ordinance authorizing the First Supplemental Indenture, amending and supplementing the 2004 Indenture, and authorizing the necessary signatures.

### **Agenda Item No. 19**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0410

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request  
(ZTM, Inc.)(District III)

INITIATED BY: City Manager's Office

AGENDA: New Business

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RECOMMENDATION: Close the Public Hearing, approve first reading of the Ordinance and tax exemption request.

BACKGROUND: On December 19, 2000, City Council approved a five-plus-five year 98% ad valorem tax exemption to ZTM, Inc. (ZTM) for an expansion that included acquisition of an existing facility and purchase of new manufacturing equipment. On November 20, 2001, City Council also approved a 74.5% five-year tax exemption on acquisition of new manufacturing equipment, and on February 3, 2004, City Council approved a 61% tax exemption on new manufacturing equipment.

Since establishment, ZTM has sustained consistent growth in manufacturing parts for the aerospace industry. ZTM has once again expanded its manufacturing capacity, to include acquisition of new manufacturing equipment in the amount of \$1,109,898. ZTM is now requesting approval of an Economic Development Tax Exemption on acquisition of new manufacturing equipment in conjunction with their expansion.

ANALYSIS: ZTM located at 4011 E. 31st S. in southeast Wichita, was locally formed in 1996. ZTM is a manufacturer of large, complex precision machine parts and assemblies for the aerospace industry. ZTM mills close-tolerance component aircraft parts in support of Wichita's major aircraft manufacturers. ZTM has assembled an impressive and efficient array of equipment, including 3-axis and 4-axis machines. ZTM also performs tooling and prototype work for the aircraft industry. ZTM utilizes sophisticated computer-controlled manufacturing equipment for their precise milling work. ZTM uses state of the art computer automated part loading, high-speed tool changer and chip removal, for speed and efficiency. Their capabilities include manufacturing parts from aluminum, steel, titanium and inconell.

Staff conducted a site-monitoring visit on March 17, 2005; ZTM is in compliance with all the terms and conditions under which the City granted the 2001 exemption. ZTM currently employs 47 employees, which the company has added 9 new employees since 2004. ZTM projects to add an additional 10 new jobs over the next five years, at an average annual salary of \$58,810.

ZTM's major customers include Boeing Wichita and Boeing Seattle. ZTM exports 100% of all production of out Kansas.

The expansion project is itemized in Exhibit I attached hereto. Under the Economic Development Incentive Policy, ZTM is eligible for the following property tax abatement:

#### TAX EXEMPTION ELIGIBILITY

ELIGIBLE % INCENTIVE		EXPLANATION
44.0%	New Job Creation:	ZTM will create at least 10 new jobs.
18.5%	Capital Improvements:	ZTM will invest at least
\$1,109,898.		

62.5% Sub Total Business - Incentive Eligibility (Maximum allowed is 100%)

00.0% Location Premium: ZTM is not located in the central redevelopment area.

#### 62.5% TOTAL EXEMPTION ALLOWED UNDER ECONOMIC DEVELOPMENT INCENTIVE POLICY

Under the Economic Development Incentive Policy, ZTM is eligible for a 62.5% tax exemption on new personal property for a five-year term. A notice of public hearing has been published.

Financial Considerations: The estimated first year taxes on the proposed \$1,109,898 expansion would be \$26,962 on personal property, based on the 2004 mill levy. Using the allowable tax exemption of 62.5 percent, the City would be exempting (for the first year) \$16,851 of new taxes from the personal property tax rolls. The tax exemption will be shared among the taxing entities as follows: City - \$4,730; County/State - \$4,498; and USD 259 - \$7,623.

Wichita State University Center for Economic Development and Business Research calculated a cost-benefit analysis indicating benefit-to-cost ratios, which are as follow:

City of Wichita	3.59 to one
Sedgwick County	2.02 to one
USD 259	1.80 to one
State of Kansas	8.80 to one

Legal Considerations: The City Attorney's Office has approved the Ordinance as to form.

Recommendations/Actions: It is recommended that City Council close the public hearing, and approve first reading of the Ordinance granting a 62.5% tax exemption on the identified personal property improvements for a five year term.

ZTM, Inc.

Exhibit I

#### Equipment Purchases:

Dell 670 Mini Tower Precesion Workstations used for CATIA software	6,124
Clausing Model #5913	800
Shrink Fit Unit	15,884
Tip Changer Kit	6,601
Cubes for Toyoda	9,980

Cincinnati FTV Machining Center	235,000
Toolsetters for Toyoda	19,305
Toyoda Horizontal Machining Center	391,925
Metal Shelving	10,409
RGV Rail System	413,870

Total Equipment	\$1,109,898
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Total Expansion Project	\$1,109,898
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## **Agenda Item No. 20**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0411

TO: Mayor and City Council

SUBJECT: Public Hearing and Tax Exemption Request  
(Custom Cupboards, Inc.)(District IV)

INITIATED BY: City Manager's Office

AGENDA: New Business

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RECOMMENDATION: Close the Public Hearing, approve first reading of the Ordinance and tax exemption request.

BACKGROUND: On July 20, 2004, City Council approved a five-plus-five year 97.5% ad valorem tax exemption to Custom Cupboards, Inc. (Custom Cupboards) for an expansion that included construction of a building addition and purchase of new equipment. Custom Cupboards has sustained consistent growth in manufacturing custom built cabinetry. Custom Cupboards has expanded its manufacturing capacity to include construction of additional manufacturing space of 27,750 s.f. and purchase of new machinery and equipment, for a total project cost of \$1,643,086. Custom Cupboards is now requesting approval of an Economic Development Tax Exemption on the building addition and new machinery and equipment in conjunction with their expansion.

ANALYSIS: Custom Cupboards located at 3738 S. Norman in southwest Wichita, was locally formed in 1981. Custom Cupboards is a leader in high quality, custom-built cabinetry for residential homes and commercial offices. Custom Cupboards, Inc. has two manufacturing facilities and a showroom located in Kansas. It is the largest manufacturer



of residential cabinetry in the state. The company manufactures and sells high quality, custom built cabinetry for the home and office, and sold by approximately 165 dealers in 28 states. Custom Cupboard's products are made-to-order kitchen and bath cabinets, desks, bookcases, entertainment centers, hutches - all with unlimited custom possibilities in finish and design. On the average, 175 sheets of plywood are cut in the manufacture of cabinets that are built each day. Custom Cupboards offers 70 door styles, 9 wood choices and 1,600 creative colors. In the finish department, beauty is added in the staining, painting, sealing, and a top-coating process. The company has a detail department where the doors and hinges are installed. The special case department adds the appliance garages, pull out shelves, tip out trays, can racks, bread boards, recycling bins, plate/wine/spice racks, valances, super susans, cutlery trays, chop blocks and more.

The main plant and corporate office which is approximately 174,000 s.f., is located at 3738 S. Norman. Custom Cupboards has another plant with approximately 24,000 s.f. of space located at 2432 S. Sheridan in Wichita which houses the rough mill where the cabinet drawer fronts and face frames are manufactured by approximately 10 employees.

The expansion project includes construction of a 27,750 s.f. building addition and purchase of new machinery and equipment (see exhibit I attached hereto). Custom Cupboards currently employs 192 employees in which the company has added 18 since 2004. As a result of the expansion project, Custom Cupboards projects to add an additional 25 within the next three years. Custom Cupboards exports 95% of all production out of the State of Kansas.

The expansion project is itemized in Exhibit I attached hereto. Under the Economic Development Incentive Policy, Custom Cupboards is eligible for the following property tax abatement:

#### TAX EXEMPTION ELIGIBILITY

ELIGIBLE %	INCENTIVE	EXPLANATION
51.0%	New Job Creation:	Custom Cupboards will create at least 25 new jobs.
24.0%	Capital Improvements:	Custom Cupboards will invest at least \$1,643,086.
75.0%	Sub Total Business - Incentive Eligibility (Maximum allowed is 100%)	
00.0%	Location Premium:	Custom Cupboard is not located in the central redevelopment area.

**75.0% TOTAL EXEMPTION ALLOWED UNDER ECONOMIC DEVELOPMENT INCENTIVE POLICY**

Under the Economic Development Incentive Policy, Custom Cupboards, Inc., is eligible for a 75% tax exemption on new real and personal property for a five-year term and 75% exemption on real property only for a second five-year term, subject to Council review. A notice of public hearing has been published.

Financial Considerations: The estimated first year taxes on the proposed \$1,643,086 expansion would be \$14,786 on real property improvements, and \$27,244 on personal property, based on the 2004 mill levy. Using the allowable tax exemption of 75.5 percent, the City would be exempting (for the first year) \$31,522 of new taxes from the real and personal property tax rolls. The tax exemption will be shared among the taxing entities as follows: City - \$8,848; County/State - \$8,413; and USD 265 - \$14,260.

Wichita State University Center for Economic Development and Business Research calculated a cost-benefit analysis indicating benefit-to-cost ratios, which are as follow:

City of Wichita	2.79 to one
Sedgwick County	1.85 to one
USD 265	1.79 to one
State of Kansas	8.55 to one

Legal Considerations: The City Attorney's Office has approved the Ordinance as to form.

Recommendations/Actions: It is recommended that City Council close the public hearing, and approve first reading of the Ordinance granting a 75% tax exemption on the identified real and personal property improvements for a five year term, and a 75% exemption on real property only, for a further five-year period, subject to City Council review.

Custom Cupboards, Inc.  
Exhibit I

New Construction:

27,750 SF building addition  
to existing facility  
\$521,616

Total New Construction                      \$521,616

Equipment Purchases:

Shaper – Mill	\$2,305	
Venjakob #2 – Spray Line Equipment		432,552
Scale – Paint Dept	849	
Cutoff Saw	45,000	
Panel Clamp	62,000	
Otimatch	92,985	

Bench Scale – Paint Shop	849	
Workbenches – Paint Shop	625	
Venjakob Workbench	462	
2 Dumpster Mills	1,234	
Lift Table – Panel Department	2,580	
Cresswood Grider #2	32,900	
Scissor Lift	4,474	
Forklift	20,822	
Paint Pump	2,250	
Full Spectrum Light – Paint Shop Inspection	1,622	
Welder – Main Dept	4,288	
Tablesaw – Dado Dept	1,785	
Lotol Paint Pump	2,250	
Lawnmower	4,000	
Floor Scale – Shipping Dept	1,855	
Venjakob #2 – Cleaning Brush Attachment	31,343	
Lexicon Transmitter w/ 25 receivers	3,847	
Silo Unloader – Part of the Dust Collection Sys	54,636	
Shaper Feed – Door Dept	800	
Paint Booths	9,969	
Lumber Rack – Cut-out Dept	2,183	
Shaper – Door Dept	2,315	
Paint Pump	2,250	
Holzma Saw	250,592	
Bolier Vaccum Cleaner	3,814	
Otimatch Label Printer	19,850	
Paint Solvent Cleaner		22,185
Total Equipment	\$1,121,470	

Total Expansion Project	\$1,643,086
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REVISED TO AMEND RECOMMENDED ACTION

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0412

TO: Mayor and City Council

SUBJECT: Letter of Intent for Old Town Courtyard by Marriott  
Hotel Project  
(District VI)

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendations: Approve the Letter of Intent.

Background: Since 1993, it has been the policy of the City of Wichita to support the development of new hotel properties in the downtown area by offering incentives to hotel developers. City staff has been working with a local hotel developer, Jim Korroch of AG Holding, LLC, to identify a package of incentives that will allow Mr. Korroch to purchase an old warehouse in the Old Town area and convert it to a Courtyard by Marriott Hotel. The property is the former Printing Inc. warehouse located at 820 E. Second Street, between Mead and Mosley Avenue. Mr. Korroch has developed other hotel properties that are operated under Marriott brands, and is currently building a new Residence Inn on Greenwich Road near 13th Street. Marriott Hotels has preapproved the Old Town property for a Courtyard by Marriott franchise.

Analysis: The developer has formed a single-asset business entity, Old Town Lodging LLC, to develop, own and operate the new Courtyard by Marriott Hotel. Old Town Lodging proposes to renovate the two-story former Printing Inc. warehouse and add three additional stories to create space for a hotel with between 106 and 129 guest rooms, a restaurant/ coffee shop,

meeting rooms, a fitness center and a large atrium area. The hotel property also includes a surface parking lot across Mosley Avenue to the east and a parking area immediately north of the hotel building. The architect is Law-Kingdon Architects and the general contractor is Dondlinger & Sons. Hotel operations, including the restaurant/coffee shop, are currently projected to create 60 new jobs.

City staff and the development team have negotiated a package of incentives designed to enhance the developer's return on investment and level the playing field between more expensive downtown redevelopment projects and more lucrative commercial developments in suburban areas. The incentive package includes industrial revenue bonds (IRBs), a HUD Section 108 loan under the Biz Loan Program, special assessment financing under the Façade Improvement Program, property and sales tax abatements with a payment-in-lieu-of-taxes (PILOT) and certain infrastructure improvements.

**IRBs:** Under the proposal, the City will issue three separate series of IRBs in an aggregate amount not-to-exceed \$12 million. A first series of senior lien bonds will be issued and purchased by Old Town Lodging LLC with funds borrowed from local banks. A second series of senior lien bonds will be sold to Old Town Lodging LLC to provide an IRB structure for the Section 108 loan. And a third, subordinated, series of bonds will be purchased by the developers as part of the equity contribution to the project. It is important to finance all "brick and mortar" costs (other than the facade work) as IRBs to maximize the prospects that the financed property will qualify for property and sales tax abatements.

**Biz Loan:** The City may administratively approve a Section 108 loan without submitting the project to HUD for approval, as long as it qualifies under the Biz Loan program. The Courtyard Hotel project is located within the Neighborhood Revitalization Area (NRA). A participating bank will make a matching loan that is at least twice the amount of the Section 108 loan. There must be at least one job created for each \$50,000 of Section 108 loan amount, including any grant funds used for loan reserves or interest payments. The Section 108 loan, under the Biz Loan Program, offers very low interest loans to businesses in the NRA, with no payments the first 12 months (interest paid from a HUD grant) and interest-only payments for the next 24 months. Principal amortization starts in year three and goes for as long as the matching bank loan is in place.

The amount of the Section 108 loan will be determined based on detailed, verifiable employment projections. The City Council is being asked separately to amend the Biz Loan program to increase the amount that can be lent through a HUD Section 108 loan, from its current ceiling of \$333,333 to instead be an amount not more than one-half the amount of the matching bank loan.

**Facade Improvements:** Under City's Façade Improvement Program, owners of building located on Douglas Avenue between Washington and Seneca may apply for low-cost loans to finance certain types of improvements to the facades of their buildings. A forgivable loan in the amount of \$15,000 per facade, up to two facades, can be made to buildings of three stories or less. The balance of the facade costs may be financed by general obligation bonds paid by special assessments levied against the property over a 15-year period. The program allows the City Council to waive the Douglas-only provision and permit the forgivable loan to be made for projects that exceed three stories. By authorizing the Facade Improvement Program for this project, the City Council also is allowing the program to be used for projects that convert a buildings use. The amount of the improvements to be financed under this program is limited to \$1.5 million in order to allow the financing to be included in a regular City bond sale as tax-exempt bonds.

**Property and Sales Tax Abatements:** The Courtyard Hotel Project is located within the Old Town Cinema Redevelopment District and the project will add significantly to the redevelopment district's tax base. However, due to shortfalls in tax increment revenue resulting from the Old Town Cinema project, tax increment financing (TIF) is not available for the Courtyard Hotel Project.

As an alternative to TIF, the City is offering a partial property tax abatement. The Courtyard property is located outside of the Old Town Cinema "project area" and is therefore eligible for property tax abatement if financed by IRBs. To ensure tht the project makes a meaningful contribution to the Old Town Cinema TIF, the developer will make annual payments-in-lieu-of-taxes of \$45,000 (less any taxes actually paid) for as long as the tax abatement remains in place. Current annual ad valorem taxes on the property are approximately \$11,000. The developer estimates that real estate taxes would be approximately \$114,000 when the hotel is fully "ramped-up." The term of the property tax abatement and PILOT will be

five years, plus a second five years subject to City Council review and approval.

In addition to property tax abatement, the City will file the necessary paperwork to apply for a sales tax exemption on items and materials purchased with the proceeds of IRBs and special assessment bonds.

**Parking:** The Courtyard Hotel is expected to provide approximately 90 off-street parking spaces on private land. The off-street parking requirement in the zoning ordinance is one parking space for each hotel guest room. To cover the deficit, the Courtyard Hotel will participate in the Old Town Parking District and pay prevailing Old Town parking rates to the City.

**Infrastructure Improvements:** The developer has requested assistance from the City with the brick paving of Mosley Avenue from Second Street to the north property line of the hotel property. City staff have offered to facilitate special assessment financing of the costs, assuming the developer provides a 100% benefit district petition. A signalized crosswalk is also requested, but is not warranted by pedestrian traffic counts at this time. Any future crosswalk will be warranted and paid for by the developer.

**Permits/Signage:** The developer plans a drive-through window on the Rock Island Avenue side of the hotel. The City will administratively process a minor street permit for this purpose. City staff will expedite the issuance of building permits and inspections. Signage will be subject to approval of the local Historic Preservation Board.

**Financial Considerations:** Old Town Lodging, LLC agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. The estimated taxes on exempted property for the first full year is approximately \$114,000 in real estate taxes and \$30,000 for personal property. In lieu of taxes, the property owner will pay the City \$45,000 per year, which the City by law must remit to the County Treasurer for distribution to the City, County and USD 259. Most of the PILOT payment will be returned to the City as part of the TIF distribution for the Old Town Cinema District.

Funding for the forgivable loan portion of the Facade Improvement Program in the amount of \$30,000 is available in a special project fund appropriated for that purpose.

The cost/benefit analysis based on the fiscal and economic impact model of the Wichita State University's Center for Economic Development and Business Research reflects cost/benefit ratios as follows:

City of Wichita	2.13
Sedgwick County	1.41
USD 259	1.14
State of Kansas	4.52

Legal Considerations: The attached Letter of Intent was prepared by the City Attorney's Office based on terms and structure provided by the City's negotiating team, and is approved as to form. Applicable letter of intent conditions are included in the Letter of Intent. The condition relating to inclusive procedures for the selection of contractors recognizes that the general contractor and architect have been preselected. Bond documents will be drafted by the City's outside bond counsel and will be reviewed and approved as to form by the Law Department prior to the issuance of any bonds. Bond documents will incorporate the clawback requirements in the City's new Economic Development Incentive Policy. Changes to the City's standard Section 108 Loan Program documents may be needed to fit the proposed transaction.

Recommendation/Actions: It is recommended that the City Council: 1) approve the Letter of Intent to issue of not-to-exceed \$12 million in industrial revenue bonds for Old Town Lodging, LLC to develop the Courtyard by Marriott Hotel in Old Town, to approve necessary waivers to allow the use of the Façade Improvement Program up to the amount of \$1.5 million, and to approve a Section 108 loan under the Biz Loan Program; 2) approve a 100% property tax abatement on all bond-financed property for an initial five-year term, plus a second five years based on City Council review and approval, subject to an annual payment-in-lieu-of-taxes in the amount of \$45,000 less actual taxes paid; 3) authorize staff to apply to the Kansas Department of Revenue for a sales tax exemption on all bond-financed purchases; 4) authorize the necessary signatures.



## **Agenda Item No. 22**

Revised to amend recommended action.

Agenda Item No. 22

City of Wichita

City Council Meeting

May 3, 2003

Agenda Report No. 05-0413

TO: Mayor and Members of the City Council

SUBJECT: Ordinance to Authorize Section 108 Wichita Biz Loan  
Program Amendments

INITIATED BY: Housing & Community Services

AGENDA: New Business

**RECOMMENDATION:** Place the revised Wichita Biz Loan Ordinance on first reading.

Background: On November 20, 2001 the City Council approved the original ordinance and execution of the HUD Section 108 Contract for Loan Guarantee Assistance and EDI funding agreements. On December 16, 2003 the City Council amended the ordinance to change the name of the program from the "Business Assistance Program" to the "Wichita Biz Loan Program"; designated INTRUST Bank, N.A. as custodian of certain accounts and security documents required by the HUD contract for Section 108 loan guarantee assistance; and authorizes the participating banks to extend conventional loans to potential borrowers as well as loans supported by the SBA guaranteed loan program. Bank conventional loans will continue to be subject to the terms of the Operating and Co-Guaranty Agreements. The December 16, 2003 revision also authorizes the Co-Guaranty Agreement and Operating Agreement with Commercial Federal Bank and such other banks as may elect to participate in the program and permits the City to authorize the lender to provide the full amount of the loan from bank funds pending City draw down of HUD Section 108 funds. The current prepared revision will amend the ordinance, to eliminate the maximum loan amount allowable for any one project for the Wichita Biz Loan Program.

Analysis: The proposed revision will authorize the City to modify the provision limiting the minimum amount of HUD Section 108 Loan(s) to any Business Borrower under the Wichita Biz Loan Program to \$8,333.33 and specifies that the maximum may not exceed the total funds then available.

Financial Considerations: HUD has approved the Section 108 Loan Guarantee funds in the amount of \$3 million to serve as a portion of the loan pool. The availability of funds

from the Section 108 Loan Guarantee program ends September 30, 2006. The availability of funds from the Economic Development Initiative grant will terminate on September 30, 2005. The EDI grant provides funding up to \$750,000 for the Wichita Biz Loan program loan loss reserve.

Legal Considerations: The revised ordinance has been prepared by the Department of Housing & Community Services and approved as to form by the Law Department. Upon passage of the revised ordinance, and publication of a public notice under the HUD guidelines, the City will have met the requirements necessary to authorize the amendment that will allow any Business Borrower under the "Wichita Biz Loan" program to receive a loan not to exceed the total funds then available. In order to meet the Developer's construction schedule a declaration of public emergency is requested for a timely adoption of the ordinance.

It is recommended that the City Council place the Ordinance on first reading and authorize the required public notice.

### **Agenda Item No. 23**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0414

TO: Mayor and City Council

SUBJECT: Naming of Park Land at 3500 E. Cessna & 1340 S. Pattie (Districts I, II, III)

INITIATED BY: Department of Park and Recreation

AGENDA: New Business

Recommendation: Name the parks, community center and bike path.

Background: City Council Policy 13 delineates the requirements for naming public facilities "... in accordance with their intended use ...". The policy calls for a seven-member committee consisting of residents appointed by the Mayor and City Council to formulate the recommendation prior to City Council consideration. On March 4, 2003, the City Council approved the official naming committee to be the Board of Park Commissioners.

Analysis: The City acquired the former Linwood Elementary School in 2004 in exchange for land at Linwood Park to construct a new school. Along with the land, the City also received the multi-purpose building for a community center.

Also in 2004, the City Council approved converting 10 acres under Stormwater Management to Park and Recreation to be added to seven acres of existing Park Board-owned land. This conversion created a new park in the Planeview neighborhood to replace the three acres in Planeview, the tract that was sold in 2003.

The Park Board met on April 11, 2005, to consider several names for these new sites. By a unanimous vote, they recommended naming the new park at 1340 S. Pattie “Goldenrod Park.” The Board also unanimously recommended naming the new community center the “George F. Williams Community Center.” In addition, they unanimously recommended naming the new park in the Planeview neighborhood “Stearman Park.” Also by unanimous vote, the Board recommended that the bike path commonly known as the Gyp Creek Bike Path be named the “Sylvia Hirahara-Hartley Bike Path and Trail.”

Financial Considerations: None.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council name the site at 1340 S. Pattie “Goldenrod Park”, name the new facility at 1340 S. Pattie the “George F. Williams Community Center”, name the site in Planeview “Stearman Park”, and name the bike path along Gyp Creek the “Sylvia Hirahara-Hartley Bike Path and Trail.”

## **Agenda Item No. 24**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0415

TO: Mayor and City Council

SUBJECT: Ice Sports (District 4)

INITIATED BY: Department of Park and Recreation

AGENDA: New Business

Recommendation: Review the management relationship with Canlan, authorize staff to negotiate the end of applicable contract, and authorize payment of necessary expenses

and subsidies in order to keep the Ice Sports-Wichita facility open during the transition to new management, secured through the RFP process.

**Background:** In 1996, the City signed a 15-year management agreement with Canlan Ice Sports Corp. to manage and operate Ice Sports-Wichita.

**Analysis:** Over the life of the contract, up to and including 2001, Ice Sports-Wichita generated enough revenue to pay all expenses, including a 5% management fee, as well as a tiered sharing of the profits with Canlan Ice Sports Corp. of Canada.

Starting in 2002, Ice Sports-Wichita started to experience losses in overall revenues, similar to all entertainment and recreational businesses in this area. Due to significant operating account balances, these losses did not start to require any additional subsidy from the City until August 2004. At that time, the City Council authorized a subsidy of \$44,000 with the understanding that Ice Sports-Wichita would pay back the funds.

From September 2004 to the present, the Park and Recreation Department has met with and work to wards an improved marketing plan, cost savings, and efficiency plan with Canlan ice Sports Corp. Canlan Ice Sports Corp. has put together a comprehensive three-year plan that shows how they plan to improve operations and revenues. By the year 2007, they are forecasting to be back “in the black”. However, it is now apparent that Ice Sports-Wichita cannot stay open this year or next without further operating subsidies.

**Financial Considerations:** Projected losses for Ice Sports-Wichita for 2005 through 2006 are: \$117,000 and \$26,695, and projected net income for 2007 is \$589. In lieu of two years of net losses, Ice Sports-Wichita is requesting net working capital subsidies of \$120,000 in 2005 and \$25,000 in 2006. The current agreement provides for the City to pay a Management Fee to Canlan. The City currently owes management fees of approximately \$105,000 to Canlan, but such funds have been withheld because of the current financial problems. Funding to pay for expenses and subsidies through the management transition period shall come from any and all revenues generated or General Fund reserves.

**Legal Considerations:** The provisions of the existing agreement obligate the City to pay a management fee to Canlan. The City has the authority to negotiate an early termination of the agreement..

**Recommendations/Actions:** It is recommended that the City Council: (1) authorize staff to negotiate an end of the contract with Canlan Ice-Sports Corporation; (2) authorize payment of expenses and subsidies necessary to keep the Ice Sports-Wichita facility open during the transition in operators; and (3) authorize the issuance of an RFP to select a new management company.

## **Agenda Item No. 25**

City of Wichita

City Council Meeting  
May 3, 2005

Agenda Report No. 05-0416

TO: Mayor and City Council

SUBJECT: Revision of Chapter 7.72 – Pools, Spas and Other Water Features

INITIATED BY: Environmental Services Department

AGENDA: New Business

Recommendation: Approve the ordinance.

Background: Current City pool standards were enacted in 1990. In recent years, awareness of the risk of recreational water borne illness has increased. (The Centers for Disease Prevention and Control reports that recreational water borne disease outbreaks are at an all time high.) The present code is not consistent with current generally accepted standards for health and safety.

The number of pools operated by homeowners' associations, apartment complexes, health clubs, and lodging facilities has increased in recent years. Standards previously developed primarily for "public" general use pools are not always flexible enough to accommodate these facilities.

Separate standards presently exist for swimming pools and spas, requiring operators to be familiar with two sets of regulations. In addition, non-traditional recreational facilities, such as interactive fountains, have been introduced into the community for recreational purposes since adoption of the present code. These water features are not covered by current pool or spa standards, and present unique needs due to their construction and mode of operation.

Analysis: The proposed code revisions incorporate current recommendations from the National Spa and Pool Institute (the major industry association) and the Centers for Disease Prevention and Control. Changes proposed are targeted toward increasing the safety of recreational water, enhancing the safety of citizens using these facilities, and clarifying regulatory requirements for operators.

Environmental Services staff met with approximately 60 stakeholders at several different meetings to solicit input on the content of the proposed ordinance revision. General comments focused on the need and importance of good public education and operator information. Participants included homeowners associations and apartment complex operators, lodging facility and health club operators, water safety authorities such as the Red Cross and YMCA, and staff from the City's Parks and Recreation Department.

The proposed revision provides a single comprehensive set of regulations for all types of recreational water facilities that is consistent with current recommendations from industry and public health authorities. Requirements are clear and understandable, science based, and within the capabilities of operators for compliance.

## Revision of Chapter 7.72 – Pools, Spas and Other Water Features

Page 2

### Financial Considerations:

Fees have not been adjusted since adoption of the current codes in 1990. The proposed schedule of fees will continue to support routine inspections, education of and consultation with operators, and investigation of public complaints. Proposed fees also take into account the differing levels of service required by seasonal and year-round operations, and locations with multiple facilities. Licenses currently generate \$26,200; under the proposed fee, revenue will increase by \$16, 450 to generate a total of \$42,650 in license revenue, based on the current number of facilities. Environmental Services will submit a proposal during the upcoming budget process to use a portion of additional revenue (\$10, 070 – salary for additional contract staff, sampling supplies, and copies of code/educational materials for pool operators, etc.) to provide “off-season” services for pools and spas that operate throughout the entire year. The remainder of the increase will help to offset increased inspection activities during the spring and summer season. Revenue from licenses will continue to provide full funding for all efforts related to these facilities.

**Legal Considerations:** The Department of Law has reviewed the proposed code revision as to form, and drafted the implementing ordinance.

### Recommendations/Actions:

It is recommended that the Council approve the revision of Chapter 7.72 of the City Code and place the ordinance on the first reading.

## Swimming Pools, Spa Pools, and Other Recreational Water Features

### Revenue Summary:

#### Proposed Fee Schedule

##### License Type License Fee

Swimming pool, wading pool, spa pool, or other recreational water feature – annual  
\$ 200

Additional annual swimming pool, wading pool, spa pool, or other recreational water feature at the same location \$ 100

Seasonal (six or fewer months) swimming pool, wading pool, spa pool, or other recreational water feature \$ 125

Additional seasonal swimming pool, wading pool, spa pool, or other recreational water feature at the same location \$ 50

### Revenue Comparison

License Type	Current Number	Current Fee	Proposed Revenue	Proposed Number	Proposed Fee	Proposed Revenue	
Swimming Pool or Spa – Annual or Seasonal	262	\$ 100	\$ 26,200	54			
\$ 200	\$ 10,800						
Additional Annual Pool or Spa at Same Location	NA	NA	NA	33	\$ 100		
\$ 3,300							
Seasonal Swimming Pool or Spa	NA	NA	NA	210	\$ 125	\$ 26,250	
Additional Seasonal Pool or Spa at Same Location	NA	NA	NA	46	\$ 50		
\$ 2,300							
Total Revenue Current	\$ 26,200	Proposed	\$ 42,650				
Revenue Increase	\$ 16,450						

### Inspection Frequency:

	Current	Proposed
Season	Late May through early August	
Staffing	Two FT contract inspectors, late May through early September	Two FT contract inspectors, June through August
	One half-time inspector, September through May	
Total Staff Hours	80 per week, late May through early September	80 per week, June through August
	20 per week, September through May	
Facilities Inspected	343	342, June through August
	87, September through May	
Average Inspection Frequency	~ 1.3 per pool, each month, late May through early September	~ 1.3 per pool, June through August
	~ 1.1 per pool, September through May	

### **Agenda Item No. 26**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0417

TO: Mayor and City Council Members

SUBJECT: Hydraulic Improvement between 57th St. South and 63rd St. South  
(District III)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendations: Approve the project.

Background: The 2002-2011 Capital Improvement Program adopted by the City Council included a project to improve Hydraulic from MacArthur to 57th St. South. Construction of the portion between MacArthur and 47th St. South has been completed. Construction is well underway in the area between 47th St. South and 57th St. South. Continuing the improvement south from 57th St. South to 63rd St. South will provide an improved transportation corridor to Wichita's south city limits. Prior to Wichita's annexation of the area, Sedgwick County's Capital Improvement Program included funding for the project. The County has acquired needed right-of-way, paid design expenses, and will contribute \$500,000 to pay part of the construction cost. District III Advisory Board sponsored a December 1, 2004 neighborhood hearing on the project. The Board voted 7-0 to recommend approval of the project. On December 14, 2004, the City Council approved an agreement with Sedgwick County that provides for the County's contribution to the project.

Analysis: The project will reconstruct Hydraulic to provide four through lanes and a center two-way left turn lane. A new bridge will be built over the Riverside drainage ditch. A storm water sewer will be constructed. The available right-of-way will be landscaped. The project is planned for letting this year. An estimated four month Hydraulic closure will be needed for the bridge replacement.

Financial Considerations: The estimated project cost is \$2,500,000 with \$2,000,000 paid by the City and \$500,000 paid by the County. The funding source for the City share is General Obligation Bonds. Funding is available from under expenditures in the previous Hydraulic projects.

Legal Considerations: The Department of Law has approved the authorizing Ordinance as to legal form.

Recommendation/Actions: It is recommended that the City Council approve the project and place the Ordinance on first reading.

### **Agenda Item No. 27**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0418

TO: Mayor and City Council Members

SUBJECT: Petition to assess a Sanitary Sewer Main Benefit Fee to the Whistling Walk Estates Additions (south of 13th, west of 119th St. West) (District V)



INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendations: Approve the Petition.

Background: The signatures on the Petition represent 29 of 57 (50.88%) resident owners and 43.94% of the improvement district area.

Analysis: The project will provide sanitary sewer main service to a developed residential area. The area is currently served by private septic tank systems.

Financial Considerations: The estimated project cost is \$102,575, with the total assessed to the improvement district. The method of assessment is the fractional basis. The estimated assessment to individual properties ranges from \$2,137 to \$9,325, depending on the lot size.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Actions: It is recommended that the City Council approve the Petition and adopt the Resolution.

### **Agenda Item No. 28**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0419

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Sanitary Sewer Lateral to serve the Whistling Walk Estates Additions (south of 13th, west of 119th St. West) (District V)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendations: Approve the Petition.

Background: The signatures on the Petition represent 29 of 54 (53.7%) resident owners and 53.63% of the improvement district area.

Analysis: The project will provide sanitary sewer service to a developed residential area. The area is currently served by private septic tank systems.

Financial Considerations: The estimated project cost is \$211,000, with the total assessed to the improvement district. The method of assessment is the fractional basis. The estimated assessment to individual properties ranges from \$5,090 to \$22,211, depending on the lot size.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Actions: It is recommended that the City Council approve the Petition and adopt the Resolution.

### **Agenda Item No. 29**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0420

TO: Mayor and City Council Members

SUBJECT: Petition to construct a Water Distribution System to serve the Whistling Walk Estates Additions (south of 13th, west of 119th St. West) (District V)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendations: Approve the Petition.

Background: The signatures on the Petition represent 30 of 57 (52.63%) resident owners and 55.57% of the improvement district area.

Analysis: The project will provide water service to a developed residential area. The area is currently served by private water wells.

Financial Considerations: The estimated project cost is \$189,000, with the total assessed to the improvement district. The method of assessment is the fractional basis. The

estimated assessment to individual properties ranges from \$3,937 to \$17,178, depending on the lot size.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of the majority of the property in the improvement district.

Recommendation/Actions: It is recommended that the City Council approve the Petition and adopt the Resolution.

### **Agenda Item No. 30**

CITY OF WICHITA  
City Council Meeting

May 3, 2005

Agenda Report No. 05-0421

TO: Mayor and City Council Members

SUBJECT: Ordinance amendments, Sections 3.95.080 and 3.95.120, relating to Transient Merchants.

INITIATED BY: Law Department

AGENDA: New Business

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Recommendation: Place the ordinance on first reading.

Background: In 2003, the transient merchants ordinances were amended to address traffic, parking, noise and other complaints made by the citizens of Wichita regarding activities of transient merchants.

The City of Wichita through its' Community Event Committee is working to establish a process for permitting community events to use City streets, parks, and city-owned facilities. The committee is seeking to develop a coordinated process for managing community events to ensure the health and safety of event patrons, residents, workers, and other visitors; to prohibit illegal activities from occurring at the community events; and to protect the rights of community event permit holders.

As part of this permit process, conflicts have developed regarding certain provisions of the transient merchant ordinances which limit the number and placement of vendors, and plans for certain community events.

Analysis: The proposed amendments except certain provisions of the transient merchant ordinances regarding location and number of transient merchant vendors from events which have been approved and sanctioned by the City of Wichita's Community Event Committee. The committee, in approving requests for such events, and the placement of vendors, will develop guidelines for the placement of such vendors which will include the distance from residential areas, the size of the zoning lot, the total number of vendors allowed for each lot, and any traffic or safety concerns related to the placement of any such vendors. All other prohibitions regarding conduct of transient merchants, and the requirements that such vendors be licensed are not changed by the proposed amendments.

Amendments are also made to bring the ordinance into compliance with state law. K.S.A. 12-1617 prohibits licensing and occupation taxes on producers and growers of farm and garden products grown within the state.

Financial Considerations: None

Legal Considerations: The amendment has been prepared and approved as to form by the Law Department.

Recommendations/Actions: Place the ordinances on first reading.

### **Agenda Item No. 31**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0422

TO: Mayor and City Council

SUBJECT: ZON2004-00067 – Zone change from “LC” Limited Commercial and “B” Multi-family Residential to “GC” General Commercial. Generally located at the southwest corner of Hydraulic Avenue and 13th Street North. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-consent)

MAPC Recommendations: Approved (6-3) “GC” General Commercial zoning with Protective Overlay #154.

MAPD Staff Recommendations: Deny.

DAB Recommendations: DAB I voted (8-0) to deny the request for "GC" zoning with the Protective Overlay, but rezone the "B" Multi-family Residential zoned lot to "LC" Limited Commercial, to match the rest of the site's "LC" zoning.

Background: The applicant requests a zone change from "LC" Limited Commercial and "B" Multi-family Residential to "GC" General Commercial on Lots 289 – 295, the Granville Park Addition. Lots 289-294 are currently zoned "LC" and Lot 295 is zoned "B". The subject properties are located on the southwest corner of Hydraulic Avenue and 13th Street North. The applicant proposes redevelopment of the property for used car sales and auto bodywork and painting. The "GC" zoning district allows outdoor vehicle and equipment sales and auto bodywork and painting.

The subject site currently has a vacant 1,000 square foot gas station building on it. The applicant proposes to build an additional 2,400 square foot building behind it for auto mechanical work, bodywork and painting. The applicant proposes to use the vacant building as office space for both of the proposed uses. The applicant has proposed to enclose the area where the paint and body works will be located with a privacy fence, a 5-foot landscape buffer on its south side where it abuts the American Legion Hall, and on its east and west sides where it is adjacent to residential zoning. The applicant has also proposed to close the entrances onto the site from Pennsylvania Avenue.

East of the subject site and across Hydraulic Avenue are a dentist office, zoned "LC", and single-family residences, zoned "LC" and "B". South of the subject site there is American Legion Post 273, zoned "LC", and single-family residences, zoned "B" and "SF-5" Single-family Residential. West of the subject site, across Pennsylvania Avenue, there is a vacant lot zoned "LC" and single-family residences zoned "SF-5". North of the subject site, across 13th Street North, there is a car sales lot, a warehouse, a bar and a neighborhood retail strip containing a self-service laundry, barber and beauty shops and some vacant space. All of these developments are zoned "LC".

Analysis: The applicants had originally requested a zone change to "GC" General Commercial on Lots 289 – 295, the Granville Park Addition, to allow used car sales and an auto body and paint shop. At the January 13, 2005 MAPC meeting the applicant changed his request to "GC" zoning with a Protective Overlay. The provisions of the proposed Protective Overlay are:

- (1) Allow auto bodywork and painting and outdoor vehicle and equipment sales as the only permitted "GC" uses.
- (2) Enclose the area where the paint and body works would be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts the American Legion Hall and on its east and west sides where it is adjacent to residential zoning.
- (3) Close the entrances onto the site from Pennsylvania Avenue.

Planning Staff made two recommendations:

- (1) Deny the requested “GC” zoning, but rezone the south most lot (Lot 295) zoned “B” to “LC”, to match the rest of the site’s “LC” zoning. This recommendation was based on the requested zoning not matching the intent and goals of the McAdams Rezoning Ordinance and the McAdams Revitalization Plan.
- (2) If the Planning Commission finds a car sales lot as an appropriate use for this site, rezone the site’s “B” zoned lot (Lot 295) to “LC” Limited Commercial to match the rest of the site’s “LC” zoning and approve a Conditional Use for vehicle sales outdoors, subject to the following conditions:
  1. All requirements of Article III, Section III.D.6.x. Of the Unified Zoning Code (UZC) shall be met. Any variance from Article III, Section III-D, 6.x of the UZC would require a waiver approved by the Wichita City Council.
  2. In addition to uses permitted in the “LC” Limited Commercial district, the site shall be limited to the sales of cars and light trucks. No sale or rental of trailers, vehicles or trucks larger than pick ups. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business.
  3. The applicant shall dedicate by separate instrument an additional 10-feet of street right-of-way along the property’s 13th Street North frontage within six months of final approval of the Conditional Use.
  4. The applicant shall dedicate by separate instrument complete access control along the site’s Hydraulic Avenue and Pennsylvania Avenue frontages. Where existing access is currently located on these frontages, the applicant shall guarantee the continuation of the curb, per City Standards.
  5. No elevated display areas.
  6. Parking spaces for employees and customers shall be provided on the property as required by the UZC and in conformance with the standards established by the City Traffic Engineer. The parking spaces shall be marked and designated for employees and customers and shall not be used for display or storage of vehicles for sale, unless an employee drives the vehicle. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business unless additional parking spaces for such businesses are provided per a revised site plan approved by the Planning Director.
  7. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
  8. A landscape plan, per the Landscape Ordinance, shall be submitted, including landscaped street yards and a landscape buffer along the south side of the site and the east and west sides where the site is adjacent to residential zoning, which shall be provided and maintained on the property as approved by the Planning Director.

9. A revised site plan reflecting the conditions of approval (including Section III.D.6.x. of the Unified Zoning Code) shall be submitted for approval by the Planning Director within six months of approval of the Conditional Use by the MAPC or governing body, as applicable. The site plan shall include a 6-foot wooden, stockade type fence located on the south side of the site and along the eastern and western portions of the site where it is adjacent to residential zoning, all lighting, including those on the building, the location and size of the office and garage space within the current building and any additional buildings, approved signage and solid screening around the trash receptacle.
10. The site shall be developed in general conformance with the approved site plan and landscape plan. All improvements shown on the approved site plan and landscape plan shall be completed within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
11. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
12. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

During the January 13, 2005 MAPC meeting, the applicant was asked if he would agree to a Conditional Use to allow car sales, but not the auto body and paint shop. The applicant replied no; he wanted both the car sales lot and the auto body and paint shop. A motion was made to defer consideration of the case for 30 days to allow the District Advisory Board (DAB) I to consider whether they wanted to hear this case. A substitute motion was then made to approve the rezoning of the "B" zoned lot to "LC". This motion failed 3-7. The original motion to defer consideration of the case for 30 days to allow DAB I to consider this case was then approved 9-1. No one spoke in opposition to the requested zone change at the MAPC meeting.

DAB I considered this case at their February 7, 2005 meeting. Several members of the public in attendance at the DAB meeting spoke against the requested zoning change to "GC" with the Protective Overlay and against the zone change of the "B" zoned lot to "LC" with a Conditional Use to allow car sales at the site. The members of the public speaking against both of these proposed actions felt they were contrary to the intent and goals of the McAdams Rezoning Ordinance and the McAdams Revitalization Plan. During the meeting, the applicant was asked if it was acceptable to him if the "B" zoned lot was rezoned to "LC" with a Conditional Use to allow car sales at the site, without the whole site being rezoned "GC" to allow the auto body and paint shop. The applicant replied that he wanted both the car sales lot and auto body and paint shop. DAB I voted (8-0) to deny both the requested zoning change to "GC" with the Protective Overlay and against the zone change of the "B" zoned lot to "LC" with a Conditional Use to allow car sales at the site. The DAB voted to rezone the "B" zoned lot to "LC" to match it with the rest of the site's "LC" zoning.

The MAPC reconsidered this case at their February 10, 2005 meeting. At this meeting, one person spoke in opposition to the requested zoning to “GC” with the Protective Overlay to allow the car sales and the auto body and paint shop and against the zone change of the “B” zoned lot to “LC” with a Conditional Use to allow car sales at the site. During the meeting, the applicant again stated that he would not be agreeable to only the rezoning of the “B” zoned lot to “LC” with a Conditional Use to allow car sales at the site. The applicant wanted the “GC” zoning, with the Protective Overlay, allowing both the car sales lot and the auto body and paint shop. The applicant also objected to condition #3 of the proposed Protective Overlay, which is the dedication of 10-foot of right-of-way along the site’s 13th Street frontage. A motion was made to deny the request for the “GC” zoning with the Protective Overlay, but to only rezone the “B” zoned lot to “LC” to match the rest of the site’s “LC” zoning. The motion failed 3-6. A motion was then made and approved, 6-3, to approve the “GC” zoning with Protective Overlay #154:

- (1) Allow auto bodywork and painting and outdoor vehicle and equipment sales as the only permitted “GC” uses.
- (2) Enclose the area where the paint and body works would be located with a privacy fence and with a 5-foot landscape buffer on its south side where it abuts a Legion Hall and on its east and west sides where it is adjacent to residential zoning
- (3) Close the entrances onto the site from Pennsylvania Avenue

Staff has received written protest against the requested zoning change with the protective overlay that represent 21.58% of the protest area. When a 20% or greater protest exists, a zoning change cannot be approved except by at least a  $\frac{3}{4}$  vote of all members of the governing body.

Financial Considerations: None.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the zone change, subject to the recommended provisions of Protective Overlay #154; place the ordinance establishing the zone change on first reading; or
2. Return the application to the MAPC for reconsideration.
3. Deny the application.

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)



## **Agenda Item No. 32**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0423

TO: Mayor and City Council

SUBJECT: CUP2005-09 Associated with (ZON2005-06) – Creation of DP282 Foliage Center Commercial Community Unit Plan; zone change to “LC” Limited Commercial. Generally located at the northwest corner of 13th Street North and Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Approve, subject to staff recommendations, vote (9-0).

MAPD Staff Recommendations: Approve, subject to staff recommendations.

DAB Recommendations: Approve, subject to staff recommendations, vote (8-0).

Background: The applicant requests a zone change from SF-5 to LC, Limited Commercial on two tracts: 1.01 acres located along North Webb Road, and .16 acres (a 20-foot wide strip) located along East 13th Street North. These two tracts are adjacent to an existing 5.97 acre tract that is currently zoned LC. The applicant desires to combine all three tracts to create DP-282, The Foliage Center Commercial Community Unit Plan, that is proposed for commercial use. The property is located west of Webb Road and north of 13th Street North. The site is currently vacant and has extensive berming and landscaping.

The applicant proposes a 7.14-acre C.U.P with two parcels. Parcels 1 (6.22 acres), and 2 (.92 acres) are both proposed for “LC” Limited Commercial and “GO” General Office uses, except: adult entertainment, residential use, cemetery, church or place of worship, school K-12, college or university, community assembly, convalescent care facility, group home, hospital, recycling process center, reverse vending machine, pawn shop, utility, car wash, construction sales and service, nightclub, tavern and drinking establishment, vehicle repair, vocational school, wireless communication facility, asphalt or concrete plant or storage. Proposed access to 13th Street North is with one full movement opening and one right-in/right-out only opening. Proposed access to Webb Road is with two full movement openings. The proposed access points do not meet the City of Wichita’s Access Management Policy.

Signs along and adjacent to 13th and Webb Road are proposed to be monument signs with a maximum height of 20 feet. Three development signs are proposed (one along 13th and two along Webb Road) to be limited to a maximum of 100 square feet each and contain the development name only. Three business use or name identification signs are proposed on Parcel 1 and two on Parcel 2. Business use or name identification signs shall be limited to a maximum sign area of 150 square feet. The requested minimum distance between signs shall be 150 feet, except business use or name identification signs may be located a minimum of 75 feet from an adjacent development sign. Building signage shall be limited to 20% of the wall area with a maximum size of 150 square feet per elevation for one sign or may be divided into a maximum of three signs, 70 square feet per sign per elevation. No flashing, moving, portable, billboard, banner or pennant signs shall be permitted (except for signs showing time and temperature).

All buildings in the CUP are proposed to share a uniform architectural character, color, and the same predominate exterior building material, as approved by the Director of Planning. Building walls and roofs must have predominately earth-tone colors, with vivid colors limited to incidental accents, and must employ materials similar to surrounding residential areas. A five-foot masonry wall easement is proposed along the entire west and north boundary of the site. Maximum building coverage is 30% for both parcels, and maximum gross floor area is 35%. Maximum height is 35 feet / two stories for both parcels with a maximum unoccupied architectural element height of 50 feet. All new utilities are to be placed underground. Setbacks, parking, screening and landscaping are proposed to meet existing codes; in addition, all parking lots are proposed to provide parking lot landscaping equivalent to one tree per 20 parking spaces. The applicant proposes limiting outdoor music and trash removal to the hours between 9 am and 10 pm.

North of the application area is SF-5 zoned vacant property (under the same ownership as the application area), a residential subdivision reserve and residential development. South of the application area is a GO General Office and LC zoned office park. Further south, the Collegiate School fronts Webb Road. East of the application area is the LI Limited Industrial zoned Waterfront commercial development and lake. Also east of the site, and south of 13th Street is the LI zoned Raytheon manufacturing complex and lake. West of the application area is SF-5 zoned property and a private drive under the ownership of the applicant, and SF-5 zoned residential development on the north side of 13th Street. Also west of the site, and south of 13th Street, is the Collegiate School.

Analysis: At the MAPC hearing on March 24, 2005, the agent for the applicant spoke in support of all staff recommended conditions. Surrounding homeowners and a representative from Collegiate School expressed concern about increased traffic and drainage issues. The MAPC voted (9-0) to recommended approval of the request subject to the staff recommended conditions listed below. DAB II heard this request on April 4, 2005, and no members of the public chose to speak at that hearing. The DAB voted (8-0) to recommend approval of the request subject to the staff recommended conditions listed below:

A. APPROVE the zone change (ZON2004-00006) to "LC" Limited Commercial subject to platting within one year.

B. APPROVE the Community Unit Plan (DP282 The Foliage Center Commercial CUP) subject to platting within one year and subject to the following conditions:

1. Transportation requirements:

a. One full movement access point on 13th Street shall align with the opening on the south side of 13th Street. Two full access points on Webb Road shall be as demonstrated by the applicant. Center turn lane improvements and accel/decel lane improvements shall be based on access to openings, and shall be set by the Traffic Engineer. The Traffic Engineer and Director of Planning shall approve the reconfigured right-of-way openings.

b. General Provision #13b shall be amended to state: "Guarantees for street improvements on Webb Road and 13th Street North shall be determined by the Traffic Engineer at the time of platting."

2. General Provision #6 shall be amended to eliminate the words "along Village Parkway."

3. General Provision #7b shall be amended to add the sentence: "Screening material shall be consistent in material and color with the supported buildings."

4. General Provision #9f shall be amended to reduce the number of business use or name identification signs on Parcel 1 from three to two.

5. General Provision #10d shall be amended to add the sentence: "Light poles shall be reduced to 14 feet when within 100 feet of residential zoning."

6. General Provision #14 shall be amended to add the following sentence "A drainage plan shall be submitted to the City Engineer for approval. Required guarantees for drainage shall be provided at the time of platting improvements."

7. A General Provision shall be added to state: "A pedestrian circulation plan shall be approved by the Planning Director prior to the issuance of building permits. Said plan shall link all buildings in the development with the arterial sidewalks on Webb Road and 13th Street North."

8. A General Provision shall be added to state: "Fire lanes shall be in accordance with the Fire Code of the City of Wichita. No parking shall be allowed in said fire lanes, although they may be used for passenger loading and unloading. The Fire Chief or his designated representative shall review and approve the location and design of all fire lanes. Fire hydrant installation and paved access to all building sites shall be provided for each phase of construction prior to the issuance of building permits."

9. The north and west building setback shall be increased from 30 feet to 35 feet.

10. All property included within this C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.

11. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-282) includes special conditions for development on this property.

12. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

Financial Considerations: None.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC and approve the zone change and CUP subject to the condition of platting within one year and the recommended conditions; instruct the Planning Department to forward the ordinance for first reading when the plat has been recorded with the Register of Deeds; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-third majority vote of the City Council on the first hearing.)

### **Agenda Item No. 33**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0424

TO: Mayor and City Council

SUBJECT: ZON2005-00004 – Zone change from “SF-5” Single-family Residential to “OW” Office Warehouse. Generally located north of Central and east of McComas. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendations: Deny “OW” Office Warehouse and approve “NR” Neighborhood Retail.  
Vote (11-0)

MAPD Staff Recommendations: Deny “OW” Office Warehouse and approve “NR” Neighborhood

Retail.

DAB IV Recommendations: March 7, 2005 – deny “OW” Office Warehouse, vote (9-0).  
April 4,  
2005 – approve “NR” Neighborhood Retail, vote (9-0).

Background: The applicant originally requested OW Office Warehouse zoning on a .37-acre site, currently zoned SF-5 Single-family. The original proposed use was a hardwood floor company showroom and storage facility (with no on site construction), located northeast of the Central and McComas intersection. This proposed land use is classified as a non-primarily retail “construction sales and services”, requiring OW or more intense zoning. The applicant proposed utilizing the existing house for an office, and adding a 1,500 square foot building in the back yard for a storage facility. North and east of the application area are SF-5 zoned single-family residences. East of the site, and on the north side of Central, are two other former single-family homes rezoned for non-residential use; at the northwest corner of Central and Kessler is an LC Limited Commercial zoned office use, and at the northeast corner of Central and Kessler is a GO General Office zoned property with an office use. South of the application area, across Central, is an NR Neighborhood Retail strip center and an LC zoned car wash. West of the site, across McComas, is GO zoned vacant land, further west is the LC zoned corner at West Street with retail and bank uses.

Analysis: This request was heard at the March 7, 2005 DAB VI hearing; one neighbor spoke in opposition to the request. The DAB voted 9-0 to recommend denial of the request.

The agent for the applicant then met with staff, and amended the request to the less intense zoning district of NR Neighborhood Retail. The application’s proposed use will no longer be for Construction Sales and Services (which is not permitted in the NR district), but is amended to “neighborhood retail uses.”

This request was heard by MAPC at the March 10, 2005 hearing; no members of the public spoke regarding the request. The MAPC voted 11-0 to deny the “OW” request and recommended approval of the “NR” request.

This request was heard again by DAB VI on April 4, 2005. The DAB voted 9-0 to recommend approval of the “NR” request.

Financial Considerations: None.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council

1. Concur with the findings of the MAPC and approve the first reading of the ordinance establishing the zone change to “NR” Neighborhood Retail; or
2. Return the application to MAPC for reconsideration.

(An override of the Planning Commission’s recommendation requires a two-thirds majority vote of the members of the governing body on the first hearing.)

### **Agenda Item No. 34**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0425

TO: Mayor and City Council

SUBJECT: VAC2004-00067 Request to vacate platted right-of-way located midway between West Street and the Big Ditch - Cowskin Floodway, north of MacArthur Road and west of Baehr Street. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve

MAPC Recommendation: Approve (Unanimously)

Background: The applicants are requesting consideration to vacate the 20-foot wide (x) 120/140-foot long portion of an east-west platted alley that abuts the south side of Lot 8 and the north sides of Lots 9-13, Block 2, Original Townsite of Oatville plat. The alley ends at a reserve on its west side and intersects with Baehr Street on its east side. There are no franchised utilities, sewer lines, manholes or water lines in the easement. There is no future need for the alley to be retained as an easement for utilities. The nearest sewer service is 500 feet west of the site. The nearest water service is approximately ½ mile west (across the Big Ditch Cowskin Floodway) or east of the site. Both abutting property owners have signed the petition and application to vacate. The Original Townsite of Oatville plat was recorded with the Register of Deeds on March 30, 1885.

Analysis: The MAPC voted to approve (12-0) the vacation request. No one spoke in opposition to this request at the MAPC’s advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: None.

Legal Considerations: A certified copy of the Vacation Order and a Restrictive Covenant will be recorded with the Register of Deeds

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

### **Agenda Item No. 35**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0426

TO: Mayor and City Council Members

SUBJECT: SUB 2004-114 -- Plat of Oak Creek Addition, Located on the Southwest Corner of 21st Street North and Greenwich Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (11-0)

Background: This site, consisting of 23 lots on 154 acres, is located within three miles of Wichita's city limits. Since annexation is a requirement for this plat, the corresponding annexation case (A05-05R) is also on the May 3 agenda. A zone change (ZON 2003-42) from SF-20, Single-Family Residential District to LC, Limited Commercial District and GO, General Office District has been approved. The site is subject to the provisions of the Oak Creek Commercial Community Unit Plan (CUP 2003-43, DP-274). A Notice of CUP has been submitted.

Analysis: Petitions, 100 percent, and a Certificate of Petitions have been submitted for water, sanitary sewer, accel/decel lane, traffic signal, drainage, paving and water main improvements. In accordance with the CUP, a Cross-lot Access and Easement has been submitted to assure internal vehicular movement between the lots. A Restrictive Covenant was provided restricting the streets to "No Parking". This Restrictive Covenant

also allows for the creation of a lot owner's association to provide for the ownership and maintenance of the proposed reserves. Since this site is within the noise impact area of McConnell Air Force Base, an Avigational Easement and Restrictive Covenant has been submitted.

This plat has been reviewed and approved by the Planning Commission, subject to conditions and recording within 30 days. Publication of the Ordinance should be withheld until the Plat is recorded with the Register of Deeds.

Legal Considerations: The Notice of CUP, Certificate of Petitions, Cross-Lot Access and Easement, Avigational Easement and Restrictive Covenants will be recorded with the Register of Deeds.

Recommendations/Actions: Approve the documents and plat, authorize the necessary signatures, adopt the Resolutions and approve first reading of the Ordinance.

### **Agenda Item No. 36**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0427

TO: Mayor and City Council Members

SUBJECT: DED 2005-07 -- Dedication of Street Right-of-Way and DED  
2005-08 -- Dedication of a Utility Easement, Located South of  
Central and on the East Side of Ridge Road. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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MAPC Recommendation: Accept the Dedications. (9-0)

Background: These dedications are associated with a lot split case (SUB 2005-09). The Dedications are for additional street right-of-way along Ridge Road and for construction and maintenance of public utilities.

Analysis: The Dedications have been reviewed and approved by the Planning Commission.

Financial Consideration: None.



Legal Consideration: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.

### **Agenda Item No. 37**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0428

TO: Mayor and City Council Members

SUBJECT: DED 2005-09 -- Dedication of a Water Easement, Located South of 21st Street North and on the East Side of Tyler Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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MAPC Recommendation: Accept the Dedication. (9-0)

Background: This dedication is associated with a lot split case (SUB 2004-149). The Dedication is for construction and maintenance of a water system.

Analysis: The Dedication has been reviewed and approved by the Planning Commission.

Financial Consideration: None.

Legal Consideration: The Dedication will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

### **Agenda Item No. 38**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0429

TO: Mayor and City Council Members

SUBJECT: DED 2005-10 -- Dedication of Access Control for Property  
Located on the North Side of Maple Street and West of Maize  
Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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MAPC Recommendation: Accept the Dedication. (9-0)

Background: This dedication is associated with a lot split case (SUB 2004-70). The Dedication is for complete access control on Maple Street.

Analysis: The Dedication has been reviewed and approved by the Planning Commission.

Financial Consideration: None.

Legal Consideration: The Dedication will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

### **Agenda Item No. 39**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0430

TO: Mayor and City Council Members

SUBJECT: DED 2005-12 and DED 2005-13 -- Dedication of Street Rights-of-  
Way, Located on the Northwest Corner of Douglas and Tyler  
Road. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

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MAPC Recommendation: Accept the Dedications. (9-0)

Background: These dedications are associated with a zoning case (ZON 2004-58). The Dedications are for additional street right-of-way along Tyler Road.

Analysis: The Dedications have been reviewed and approved by the Planning Commission.

Financial Consideration: None.

Legal Consideration: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.

Agenda Item No. 40

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0431

TO: Mayor and City Council Members

SUBJECT: A05-07R Request by Maple Group, LLC to annex lands generally located northeast of the intersection of 151st Street West and Maple Street.  
(District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

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Recommendation: Place the annexation ordinance on first reading.

Background: The City has received a request to annex 75.3 acres of land generally located northeast of the intersection of 151st Street West and Maple Street. The annexation area abuts the City of Wichita to the east and south of the proposed property. The property owner proposes to develop the site for single-family (SF-5) use.

Analysis:

Land Use and Zoning: The proposed annexation consists of 75.3 acres of property currently zoned "SF-20" Single-Family Residential. Upon annexation, the property will be rezoned to SF-5, Single-Family Residential to allow for the lot sizes being platted.

Property to the east and south of the subject property is zoned "SF-5" Single-Family Residential, while property to the north and west is zoned "SF-20."

Public Services:

There are existing water mains in Maple and in City View, north of Maple that are more than sufficient for extension into the area being platted and annexed. There are existing sewer lines in the Shadow Woods Addition to the southeast that have more than sufficient capacity for the subject area, assuming that the elevations across the drainage way are adequate.

Street System: The subject property borders Maple Street to the south, which is a paved, two-lane arterial road. The property also connects to Country View and City View, which are both paved residential streets.

The City of Wichita Capital Improvement Program (CIP) 2004-2013 has scheduled road improvements along Maple Street from 135th Street to 167th Street, which runs along the south side of the subject property. The Sedgwick County Capital Improvement Program 2005-2009 and the 2004 Transportation Improvement Program do not call for improvements near the proposed annexation site.

Public Safety: Fire services to this site can be provided by the City of Wichita within a six (6) to seven (7) minute approximate response time from City Station No. 17 located at 10651 W. Maple. Upon annexation, police protection will be provided to the area by the Patrol West Bureau of the Wichita Police Department, headquartered at 661 N. Elder.

Parks: The Auburn Hills Golf Course, a 158-acre, 18-hole championship golf course, is located to the south of the proposed annexation site. In addition, Meadows Parks (51.38 acres) and West Millbrook Park (25.6 acres) are approximately 1½ miles to the east from the subject property. According to the 1996 Parks and Open Space Master Plan, a greenway has been proposed that would run through the southeasterly portion of the subject property.

School District: The annexation property is part of the Unified School District 265 (Goddard School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the 2010 Wichita Urban Service Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is \$11,450 with a total assessed value of

\$3,435. Using the current City levy (\$31.828/\$1000 x assessed valuation), this roughly yields \$109 in City annual tax revenues for the property. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property, and the current mill levy. At this time, the property owner is seeking approval of a plat to develop 109 lots of single-family units on the subject property within the next four years. The value of this residential development is estimated at \$125,000 per acre; a total value after completion is estimated at \$13,625,000. Assuming the current City levy remains about the same, this would roughly yield \$49,870 in City annual tax revenues.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, et seq.

Recommendations/Actions: Approve the annexation request and first reading of the Ordinance.

### **Agenda Item No. 41**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0432

TO: Wichita Airport Authority

SUBJECT: Midfield Road Site Development  
Wichita Mid-Continent Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority

Recommendation: Approve the adjustment to the capital project.

Background: On September 9, 2003 the Wichita Airport Authority approved an infrastructure project designed to better accommodate development on Mid-Continent Airport. Utility Improvements are identified in the current Capital Improvement Program to accomplish this goal.

Analysis: In order to comply with agreements made with the new Honeywell development, the airport's existing rotating beacon must be relocated and a new power transformer must be added to accommodate the project.

Financial Considerations: This portion of the project is estimated to cost \$340,000 and will be funded with General Obligation Bonds paid with Airport Revenue. Federal Funds

will be requested to pay for a portion of the relocation of the rotating beacon. The increase of \$340,000 will result in a total budget of \$900,000.

Legal Considerations: The Law Department has approved the Authorizing Resolution as to legal form.

Recommendations/Actions: Approve the project budget, adopt the resolution, and authorize the necessary signatures.

### **Agenda Item No. 42**

City of Wichita  
City Council Meeting  
May 3, 2005

Agenda Report No. 05-0433

TO: Wichita Airport Authority

SUBJECT: Remote Parking Lot – Change Order  
Wichita Mid-Continent Airport

INITIATED BY: Airport Department

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Change Order.

Background: On March 16, 2004 the Wichita Airport Authority approved a project to provide for a Remote Parking Lot. Increased demand at the terminal paid parking lots required the addition of more paid parking. The parking lot is fully functional and serving Wichita travelers.

Analysis: A final change order has been prepared and includes the addition of a fabric weed barrier for aesthetic considerations.

Financial Considerations: The cost of the change order is \$1,430. Funds are available within the approved budget. Total change orders are less than one percent of the original contract amount.

Legal Considerations: The Law Department has approved the change order.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.